1242.

SUPREME COURT OF THE UNITED STATES.

No. 180.

THE LOUISVILLE MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

MICHAEL WELCH.

IN ERROR TO THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF LOUISIANA.

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J. & G. S. Gideon, Printers.

United States circuit court, fifth circuit, and district of Louisiana.

LOUISVILLE MANUFACTURING COMPANY
vs.
MICHAEL WELCH. } No. 1,621.

Pleas and proceedings before the honorable Theo. H. McCaleb, district judge, and one of the judges of the United States circuit court, fifth circuit and district of Louisiana, at a circuit court of the United States, in and for the fifth circuit and district aforesaid, being the April term of said court, begun and held at the city of New Orleans, in the district aforesaid, on the twenty-second day of April, being the fourth Monday of said month of April, in the year of our Lord one thousand eight hundred and forty-eight.

Be it remembered, that heretofore, to wit, on the first day of August, in the year of our Lord one thousand eight hundred and forty-seven, came the Louisville Manufacturing Company, by their proctors, Stockton and Steele, esq'rs, into the clerk's office of the said court, and filed the following petition, which is in the words and figures following, to wit:

To the honorable the circuit court of the United States, for the district of Louisiana:

The petition of the Louisville Manufacturing Company avers, that the said company is duly incorporated by act of the legislature of the State of Kentucky, approved on the 15th day of February, 1838, of which act a copy is on file in suit No. 1,536 on the docket of this honorable court; that said company is domiciliated and transacting the business of manufacturing in the said State of Kentucky, and that the corporators thereof are each and all citizens of the State of Kentucky, and therein resident; and that Michael Welch, the defendant herein, is a citizen of, and is resident in, the State of Louisiana.

That said Michael Welch is justly and truly indebted to petitioners in the full sum of twenty-four hundred and sixty $\frac{44}{100}$ dollars, with interest thereon, and costs of protests of four several bills of exchanges hereinafter to be mentioned; for this, to wit, that heretofore the said Michael Welch, at New Orleans, on or about the 3d day of May, 1845, executed and delivered to one Thomas Barrett, then of said city, but since deceased, a certain open letter of credit or guaranty, signed by him, the said Michael Welch, whereby he, the said Michael Welch, bound and obligated himself to guaranty, and did guaranty, the payment of any purchases of bagging and rope which he, the said Thomas Barrett, should have occasion to make between the date of the said guaranty or letter of credit and the first day of December then next ensuing said date, as will more fully appear by reference to said original letter of credit, which is hereto annexed and made part of this petition;

that the said Thomas Barrett afterwards presented and delivered to petitioners the said original letter of credit or guaranty; and at various times between the date of the said letter and the first day of December, 1845, your petitioners sold and delivered to the said Barrett, on the faith of said letter of credit or guaranty, large quantities of bagging and rope, to wit, on or before the 22d day of July, 1845, the value of eight hundred and ninety-one $\frac{89}{100}$ dollars, after the last named date; and on or before the 28th day of August, 1845, the further value of six hundred and five $\frac{1}{100}$ dollars; and after the 28th day of August, 1845, and on or before the 18th day of September, 1845, the still further value of five hundred and thirty-one $\frac{50}{100}$ dollars; and after the said 18th day of September, 1845, and on or before the first day of December, 1845, the still further value of four hundred and thirty-three $\frac{1}{100}$ dollars; all which sales of bagging and rope were made to the said Barrett by petitioners on the faith of the said letter of credit, and without any intention to trust or credit the said Barrett on his own responsibility.

That on the 22d day of July, 1845, the petitioners by their agent Thomas S. Forman, drew a bill of exchange for eight hundred and ninety-one $\frac{89}{100}$ dollars on the said Barrett, dated on that day at New Orleans, due to the order of petitioners on the 20th day of December, 1845, which was presented to and accepted by said Barrett; that the consideration of said bill was the price of the bagging and rope up to that time sold as aforesaid by the petitioners to the said Barrett, on the faith of said letter of credit.

That on the 28th day of August, 1845, at New Orleans, the said Barrett drew a bill of exchange of that date, for six hundred and five $\frac{1}{100}$ dollars, upon himself, due to the order of petitioners on the 10th January, 1846, and accepted by himself; the consideration of which said bill was the price of the bagging and rope sold as aforesaid by petitioners to said Barrett on the faith of said letter of credit after the 22d day of July, 1845, and at or before the date of said bill of exchange.

That on the 18th day of September, at New Orleans, 1845, said Barrett drew a bill of exchange of that date upon himself for the sum of five hundred and thirty-one $\frac{50}{100}$ dollars, due to the order of petitioners on the 15th day of January, 1846, and by said Barrett accepted; the consideration of which said bill was the price of bagging and rope sold by petitioners to said Barrett as aforesaid upon the faith of said letter of credit after the 28th day of August, 1845, and before the date of drawing said bill.

That on the 1st day of December, 1845, at the city of New Orleans, the said Barrett drew a bill of exchange of that date upon himself for the sum of four hundred and thirty-three $\frac{3}{100}$ dollars, due to the order of your petitioners on the 20th day of January, 1846, which was accepted by himself; and the consideration of said bill was the price of bagging and rope so sold as aforesaid by petitioners to said Barrett on the faith of said letter of credit, after the 18th day of September, 1845, and before the said 1st day of December, 1845; all of which said four bills of ex-

change so accepted as aforesaid by the said Barrett are hereto annexed and are made a part of this petition.

Petitioners aver, that in taking and receiving said bills of exchange they did not release nor intend to release the said Welch from his obligations to them, on account of said sales of bagging and rope so made as aforesaid by petitioners to said Barrett on the faith of said letter of credit, nor did they intend to trust the said Barrett on his own responsibility, but they relied solely on said letter of credit.

That said Michael Welch was duly and legally notified in due time, and was well aware that said sales of bagging and rope had been made by plaintiffs to said Barrett on the faith of his said letter of credit; and that he, said Welch, was liable for the same to plaintiffs

That when said bills of exchange fell due, they were each at the date of its maturity presented by a notary to the agent of said Barrett, he being absent, at the office of said Barrett in the city of New Orleans, for payment, and payment was then and there demanded of each of said bills from the said Barrett by demand on his agent or clerk found at the time in said office, but payment was refused, and they were not paid; whereupon said bills, and each of them, were protested by said notary for non-payment, of which default of said Barrett the said Michael Welch had due and legal notice; all which will more fully appear by reference to said acts of protest hereto annexed for that purpose.

That said Welch has often faithfully promised to pay to petitioners the said several sums of money; but though often amicably requested so to do, he has hitherto wholly failed and neglected to pay the same or any part thereof.

Petitioners allege that said sales of bagging and rope were made on the usual terms of credit for said articles; that said Barrett has departed this life, and his estate is in due course of administration in the proper court of Louisiana; that his executors have acknowledged the said acceptances and debts as just and legal, and that his estate is insolvent; that said Welch had in his hands property, effects, rights and credits, belonging to the said Barrett of much larger value than the amount of the aggregate sum due your petitioners; and well aware that said purchases had been made as aforesaid, he, said Welch, retained in possession the said property and effects of said Barrett in order to indemnify himself against loss.

The premises considered, petitioners pray that said Michael Welch be duly cited according to law; and after all due proceedings had, he, said Welch, be condemned and adjudged to pay to petitioners the said aggregate sum of twenty four-hundred and sixty $\frac{17}{100}$ dollars, with interest as follows, to wit, from the 23d December, 1845, on the sum of $891 32; from the 13th January, 1846, on the sum of six hundred and five $\frac{1}{100}$ dollars; from the 18th January, 1846, on the sum of $531 50; and from the 23d day of January, 1846, on the sum of $433 $\frac{1}{100}$ with $13 50, for cost of protest and costs of suit; and petitioners further pray for general relief; and as in duty, &c.

STOCKTON & STEELE,
Attorneys for plaintiffs.

Documents referred to in the foregoing petition.

Act of the legislature of the State of Kentucky.

An act to incorporate the Louisville manufacturing Company.

Sec. 1st. Be it enacted by the general assembly of the Commonwealth of Kentucky that L. L. Shreve, Noah Haydon, W. H. Pope, Henry Lewis, B. R. McIlvain, Wm. Fellony, S. G. Henry, Robt. I. Ward, Chapman Coleman, and George Keats, and those who may hereafter associate with them as stockholders, and their successors, shall be and they are hereby created a body politic and corporate until the year 1860, by the name of the Louisville Manufacturing Company, and by that name are hereby made able and capable in law to take, purchase, hold, and possess lands, tenements, hereditaments, goods, chattels, and effects to an amount not exceeding five hundred thousand dollars, and the same to sell, grant, demise, alien, and dispose of at pleasure; also to sue and be sued, to plead and be impleaded, answer and be answered, defend and be defended, in all courts and elsewhere. They may establish and put in force all such bye-laws and ordinances that may be conducive and proper for the government of said corporation, and the management of its fiscal and prudential concerns, and the direction of its officers and agents They may have and use a ommon seal, and change, renew, and alter the same at pleasure, and may generally do and perform all such acts and things for the purpose of carrying into effect the object of this act, that corporations for limited purposes may lawfully do, so not contrary to the constitution of this or of the United States.

Sec. 2nd. That the capital stock of said company shall be divided into two hundred shares of five hundred dollars each, to be subscribed, paid for, and held by the persons named in this act, agreeably to such rules and regulations as the majority of them shall agree and direct, for which stock, when fully paid for, a certificate shall issue, under the seal of the corporation, signed by the president, and countersigned by the secretary; which stock may be transferred by the proprietor thereof by a written transfer on the book of the corporation, in person or by proxy, and the assignee shall have right to surrender the certificate and sue out a new one in his own name. The stock shall be personal estate, and pass as such; and each share shall entitle the holder to one vote in all elections, and at all meetings of the stockholders; and that the original distribution of the stock shall not be changed, nor a transfer to any other associate, without the consent of three-fourths of the stockholders; but the stock shall pass to any executor or administrator who shall be entitled to vote on it, and, if necessary for the payment of debts, may be sold without the consent of the stockholders.

Sec. 3d. That L. L. Shreve, Noah Hayden, W. H. Pope, or one or more of them, may call the first meeting of the corporation at any convenient time and place in the city of Louisville, on ten days notice in writing, or by publication in a newspaper printed in the city of Louisville, and the members of the corporation, at that time, and on the

first of January in each year thereafter, shall elect a business committee, to consist of three stockholders, one of whom shall be voted for as president, and to the business committee shall be confided the business of the corporation, which shall be to carry on the manufacture of hemp, manilla rope, tow, flax, cotton, and woollen goods, and they may purchase and erect such mills and works, machinery and buildings, as may be necessary to carry on their useful manufactures and branches of business; and the president shall, on the first Monday in each year, cause to be made a statement of the business and accounts of the company, and a balance sheet of its affairs, and the business committee may divide the annual profits arising from the business, and pay the same over to the stockholders; but no such dividend shall reduce the capital stock, nor shall the capital stock be withdrawn.

Sec. 4th. The president and business committee shall continue in office until their successors are elected and qualified; and in case the president, or either of the committee, die or resign, the remainder shall supply the vacancy for the residue of the time, but none but stockholders shall be president or a member of the business committee.

Sec. 5th. That the company may, at any time, three-fourths of the stock concurring, dissolve the corporation and wind up its business; provided they first pay the debts of the corporation. And if they shall so dissolve it, or shall withdraw the capital without paying the debts of the corporation, or shall lessen the capital by declaring dividends when there shall be no profits, the corporation shall be liable for the corporate debts in their individual capacity, and may be made liable by a suit in equity against the corporation, or any one or more of the corporators, to the extent of the amount of their stock.

Sec. 6th. The business committee shall appoint a secretary and treasurer, and such other laborers and agents as the business of the corporation may require, and they shall be under the control and direction of said committee, who may remove them at pleasure. They shall cause a correct record of the proceedings of the corporation to be kept, and faithful and correct books to be kept of the business and operations of the company, and any violations of the charter shall operate as a forfeiture of the corporate privileges.

Sec. 7th. The corporation may go into operation as soon as sixty shares shall be subscribed, and the residue may be sold at such time and in such manner as the corporators may agree on.

(Signed) R. P. LETCHER,
Speaker of the House of Representatives.
C. A. WICKLIFFE,
Speaker of the Senate.

Approved February 15, 1838.
(Signed) JAS. CLARK.

By the Governor:
(Signed) J. M. BULLOCK,
Secretary of State.

Letter of credit of M. Welch.

I hereby guarantee the payment of any purchases of bagging and rope which Thomas Barrett may have occasion to make between this and the first of December next. M. WELCH.

NEW ORLEANS, 3d *May*, 1845.

Bills of exchange.

Exchange for 891\frac{33}{100}$. NEW ORLEANS, *July 22d*, 1845.

1. On the 20th December next, after date of this first of exchange, second unpaid, pay to the order of the Louisville Manufacturing Company eight hundred ninety-one and $\frac{33}{100}$ dollars.

Value received, and charge the same to account.

For bagging and rope bought of W. F. & K.

THOS. S. FORMAN,
Agent L. M. Company.

To THOMAS BARRETT, esq.,
New Orleans, La.—No. 997.

Original. THOS. BARRETT.

$7,780.—Exchange for 605\frac{1}{100}$. NEW ORLEANS, *Aug. 28th*, 1845.

1. On the 10th of January next, after date of this first of exchange, second unpaid, pay to the order of the Louisville Manufacturing Company six hundred five and $\frac{1}{100}$ dollars.

Value received, and charge the same to account.

THOS. BARRETT.

To THOS. BARRETT, esq.,
New Orleans, La.

Original. Accepted. THOS. BARRETT.

Exchange for 531\frac{50}{100}$. NEW ORLEANS, *Sept. 18th*, 1845.

1. On the 15th of January next, after date of this first of exchange, second unpaid, pay to the order of the Louisville Manufacturing Company five hundred thirty-one and $\frac{50}{100}$ dollars.

Value received, and charge the same to account.

THOS. BARRETT.

To THOMAS BARRETT, esq.
New Orleans, La.

Accepted. Original. THOS. BARRETT.

Exchange for 433\frac{1}{100}$. NEW ORLEANS, *Dec. 1st*, 1845.

1. On the 20th January next, after date of this first of exchange, second unpaid, pay to the order of the Louisville Manufacturing Company four hundred thirty-three and $\frac{1}{100}$ dollars.

Value received, and charge the same to account.

THOS. BARRETT.

To THOMAS BARRETT, esq., *New Orleans, La.*

(Endorsed) For the Louisville Manufacturing Company.
WORSLEY, FORMAN & KENNEDY,
Agents.
By W. C, CHAMBERS.
WORSLEY, FORMAN & KENNENY,
By W. C. CHAMBERS.

Accepted. Original. THOS. BARRETT.

Protests.

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known, that on this thirteenth day of January, in the year one thousand eight hundred and forty-six, at the request of the City Bank of New Orleans, holder of the original draft, whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, by my deputy, Ml. Amie, junr., presented said draft to a clerk of the acceptor at his office, (said acceptor not being in,) and demanded payment thereof, and was answered that the same could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer of the said draft as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of A. Commandeur and Michel Amie, junr., witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, [SEAL.] on the day and year first above written.

H. B. CENAS, *Notary Public.*

NEW ORLEANS, *August* 28, 1845.

Exchange for $605 $\frac{7}{100}$.

On the 10th of January next, after date of this first of exchange, (second unpaid,) pay to the order of the Louisville Manufacturing Company six hundred five and $\frac{7}{100}$ dollars, value received.

And charge the same to account.

THO. BARRETT.

To THOS. BARRETT, ESQ., *New Orleans, La.*

(Endorsed.)—The Louisville Manufacturing Company, by W. W. Worsley, president, pay R. J. Palfrey, esq., cashier, or order.

W. RICHARDSON.

Original. Accepted. THOS. BARRETT.

I, Hilary Breton Cenas, a notary public in and for the parish of Orleans and State of Louisiana, residing in the city of New Orleans, duly

commissioned and sworn, do certify, that on the day of the date of this protest, I notified the drawers and all the endorsers of the draft hereunto attached of the within protest of the same for non-payment, by notices in writing and print by me signed, of the same date of the said protest, and which I directed as follows, those for the endorsers enclosed in the one for W. Richardson, cashier, directed at Louisville, Kentucky; and on the same day I deposited said notices in the post office in this city, in time to go by the first mail thereafter.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans aforesaid, on the thirteenth day of January, A. D. 1846.

[SEAL.]

H. B. CENAS, *Notary Public.*

UNITED STATES OF AMERICA,
State of Louisiana:

By this public instrument of protest, be it known, that on this seventeenth day of January, in the year one thousand eight hundred and forty-six, at the request of the City Bank of New Orleans, holder of the original draft whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, by my deputy, A. Commandeur, presented the said draft to Mr. Griffon, the agent of the acceptor, at his office, (said acceptor not being in,) and demanded payment thereof, and was answered that the same would be paid on Monday morning next.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested, in the presence of A. Commandeur and Ml. Amie, junr., witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.]

H. B. CENAS, *Notary Public.*

$531 $\frac{44}{100}$. NEW ORLEANS, *September* 10*th*, 1845.

On the 15th of January next, after date of this first of exchange, (second unpaid,) pay to the order of the Louisville Manufacturing Company five hundred thirty-one and $\frac{44}{100}$ dollars, value received, and charge the same to account.

THO. BARRETT.

To THOMAS BARRETT, ESQ., *New Orleans, La.*

(Endorsed.)—The Louisville Manufacturing Company, by W. W. Worsley, president, [l. s.,] pay R. J. Palfrey, cashier, or order.

GEO. C. GWATHMEY, *Cashier.*

I, Hilary Breton Cenas, a notary public in and for the parish of Orleans and State of Louisiana, residing in the city of New Orleans, duly commissioned and sworn, do certify, that on the day of the date of this protest, I notified the drawers and all the endorsers of the draft hereunto attached of the within protest of the same for non-payment, by notices in writing and print by me signed, of the same date of the said protest; and those for the endorsers enclosed in the one for Geo. C. Gwathmey, cashier, directed to him at Louisville, Kentucky; and on the same day I deposited said notices in the post office in this city, in time to go by the first mail hereafter.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans aforesaid, on the seventeenth of January, A. D. 1846. [SEAL.]

H. B. CENAS, *Notary Public.*

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known that, on this twenty-third day of January, in the year one thousand eight hundred and forty-six, at the request of R. M. Davis, esq., cashier of the Bank of Louisiana, holder of the original draft whereof a true copy is on the reverse hereof written, I, William Christy, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said draft to a clerk of the acceptor, at his counting house, by my deputy, H. Rareshide, who demanded payment thereof, and who was answered that the said acceptor was not then in, and had left no funds to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said draft.

Thus done and protested in the presence of W. G. Latham and H. Rareshide, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal, at the city of New Orleans, on the day and year first above written. [SEAL.]

WM. CHRISTY, *Notary Public.*

Exchange for $433 $\frac{1}{100}$.

NEW ORLEANS, *December 1st*, 1845.

On the 20th January next, after date of this first of exchange, (second unpaid,) pay to the order of the Louisville Manuf'g Co. four hundred thirty-three & $\frac{1}{100}$ dollars, value received, and charge the same to account.

THO. BARRETT.

To THO. BARRETT, esq.,
New Orleans, La.

(Endorsed.) For the Louisville Manuf'g Co.
WORSLEY, FORMAN & C. KENNEDY, *Agents.*
By W. CHAMBERS.
WORSLEY, FORMAN & KENNEDY,
By W. CHAMBERS.
Accepted. Original. THO. BARRETT.

And afterwards, to wit, on the 24th day of June, 1848, the following citation was issued from the clerk's office:

The President of the United States of America, to the marshal of the district of Louisiana, or his lawful deputy, greeting:

LOUISVILLE MANUFACTURING CO.
vs.
MICHAEL WELCH. } No. 1621.

You are hereby commanded to summon Michael Welch, citizen of the State of Louisiana, to comply with the demand of the Louisville Manufacturing Company, citizens of the State of Kentucky, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of August, 1847.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said district of Louisiana, this 24th day of June, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States of America the 71st year. F. N. HARALSON, *D'y Clerk.*

[SEAL.]

Marshal's return on the foregoing citation.

Received this 24th day of June, 1847, and on the 3d day of July, 1847, served copies of the within citation, plaintiff's petition and documents annexed, on the within named M. Welch, in the manner following, to wit, by handing the same to him in person in New Orleans. Returned November 8th, 1847. CHAS. A. LABUZAN,
D'y Marshal.

And afterwards, to wit, on the 18th day of December, 1847, the following exception and answer was filed in the clerk's office:

LOUISVILLE MAN'G COMPANY
vs.
M. WELCH.

United States circuit court, district of Louisiana.

The defendant, by way of exception, pleads, that there is no such company as the Louisville Manufacturing company duly incorporated

and authorized to sue in this honorable court, and prays that their suit be dismissed.

And if the said exception should be overruled, the defendant, for answer, further says, that he denies all and singular the allegations in plaintiff's petition contained, and prays for judgment against said plaintiff, and for such relief as justice and equity may require.

DUNBAR, *for def't.*

And afterwards, to wit, on the 10th day of May, 1848, the following entry was made of record:

LOUISVILLE MANUFACTURING Co. vs. MICHAEL WELCH. } 1621.

The trial of this case being assigned for this day, appeared the respective parties by their counsel, Stockton & Steele, esquires, for the plaintiffs, and W. Dunbar, esq., for the defendant, when the following jurors were empannelled and sworn well and truly to try the issue joined between the parties, to wit, Henry Simon, M. Duggan, C. P. Knight, Alexis Leroy, John Donovan, C. L. Frost, Zacharie Relf, and John Jenkins, when, it appearing that the panel was incomplete, it was ordered, that the further trial be continued until to-morrow, at 10 o'clock, A. M., to enable the marshal to bring into court other jurors to supply the deficiency; the jury already sworn were then discharged until to-morrow, at 10 o'clock, A. M.

And afterwards, to wit, on the 11th day of May, 1848, the testimony of W. Chambers was offered in evidence.

I was a clerk in the houses of Worsley & Forman, Worsley, Forman & Kennedy, and Forman & Kennedy, from the winter of 1842 to July, 1847. In the spring or summer of 1845, Thomas Barrett deposited with Worsley, Forman & Kennedy a letter of credit from M. Welch, guaranteeing the payment of bagging and rope, which Barrett might purchase, to a certain amount within a certain named period. On the said letter of credit, Worsley, Forman & Kennedy did, as factors of "The Louisville Manufacturing Company," sell to Barrett, at various times, sundry invoice of bagging and rope belonging to said Louisville Manuf'g Co., for which they took his acceptances for account of said company as follows, viz:

One dated	22d	July,	1845,	due	20–23	December,	for	$891 32.
One "	28th	August,	"	"	10–13	January, 1846,		605 07.
One "	18th	Sept.,	"	"	15–18	"	"	531 50.
One "	1st	Dec.	"	"	20–23	"	"	433 08.

Subsequently to taking the acceptance last named, they sold him bagging and rope to the amount of $78 86, which stands to his debt on open account.

Mr. Welch was not notified by Worsley, Forman & Kennedy that the letter of credit had been deposited with them at the time it was deposited, nor until after the maturity of the acceptance first named above.

Shortly after the maturity of the said bill, in the latter part of December or early part of January, I think between the 5th and 10th of January, I saw Mr. Welch in person, informed him of the sales of bagging and rope made by Worsley, Forman & Kennedy to Mr. Barrett on his letter of credit; told him that the acceptance of Barrett for $891 $\frac{39}{100}$ was unpaid; that he would be looked to for the payment of it, and the other acceptances should they not be paid. He requested me to try and get all I could from Barrett.

On the 7th of May, 1846, I addressed him a letter urging him to settle the claim. Saw him in person, don't recollect the date of the interview, and urged him to settle the business. He requested that I should not be pressed for payment, saying that it was a very hard case; that he did not wish to place any obstacle in the way of collecting the money; that he had not then at command the means of paying it conveniently; that he would have more ample means when the next cotton crop came into market.

On the 26th of April, 1847, I had an interview with Mr. Welch. He remarked that he understood the letter of credit to restrict the time of the credit which might be given for goods purchased under it to the month of December; that, under the impression to protect himself against the liability, he retained under his control certain valuable papers of Barretts, until the expiration of the time to which he thought his liability extended, when, upon the assurance of Mr. Barrett that the debt was settled, he surrendered the papers.

I remarked to him that, in the interview which I had with him in the spring of 1846, he has assured me that it was not his intention to place any obstacle in the way of the collection of the money; that he asked, as a favor, that he should not be pressed for its immediate payment, representing that he had not then the means at command to pay it, but that he would be able to pay it with less inconvenience when the next cotton crop came into market; that he had induced the belief that he would pay it as soon as he could do so. He replied that it was at that time his intention to pay it, and that he would have done so, but that he subsequently learned that he would lose a much larger sum by Mr. Barrett; that he would be unable to bear so heavy a loss, and had come to the determination not to pay this claim, or any other claim growing out of his liability for Barrett, unless compelled by law.

The papers to which I refer as having been in the hands of Mr. Welch, and which he said he might have retained to indemnify him, he did not understand him as saying had been placed in his hands by Mr. Barrett for that purpose, but came into his hands without any reference whatever to this liability; but that, if he had known he was liable, he could and would have retained them.

Mr. Welch did not, as well as I remember, make to me any promise to pay the bills, except in the manner previously referred to.

Worsley, Forman & Kennedy, or Worsley & Forman, their predecessors in business, had previously sold to Mr. Barrett bagging and rope to a large amount upon a letter of credit of Mr. Welch and Mr. Elgee,

acting as the agent of Worsley, Forman & Kennedy. I would not have sold goods to Mr. Barrett on time upon his individual responsibility alone.

On the day of the maturity of the bill first maturing, the one for $891 32, due 20–23 December, Mr. Duff, a young man who had charge of Mr. Barrett's business, called on me and told me that Mr. Barrett was sick; that he would be unable to pay the bill on that day, and requested that Worsley, Forman & Kennedy, would take it up, representing that he would be in funds to pay it in a few days, and, as soon as he was able, would pay it. In consequence of which, the bill was taken up by Worsley, Forman & Kennedy, as agent of the Louisville Manufacturing Company.

W. CHAMBERS.

NEW ORLEANS, *February* 23, 1848.

To be admitted as evidence, as if sworn to and given in open court.

WM. DUNBAR, *for Welch.*
STOCKTON & STEELE, *for plaintiff.*

NEW ORLEANS, *February* 23, 1848.

And on the same day the testimony of W. W. Whitehead was offered in evidence.

LOUISVILLE MANUFACTURING COMPANY
vs.
MICHAEL WELCH.

I am acquainted with the bagging and rope trade in New Orleans; have been several times, at different periods, in the commercial house of Worsley, Forman & Kennedy, and Forman & Kennedy; knows that those articles are sometimes sold for cash, and sometimes on time. Time sales made about this period of the year are most frequently made payable about the beginning of the ensuing year, but vary as to the time; sometimes the bills are drawn payable as early as November and December, and sometimes the time is extended to January, February, and March. Time sales are also sometimes made on shorter time, to wit, thirty, sixty, ninety, and one hundred and twenty days.

W. W. WHITEHEAD.

NEW ORLEANS, *May* 10, 1848.

The above evidence is taken by consent of parties, and it is agreed that it may be read on the trial of the above case, as testimony, by either party.

STOCKTON & STEELE, *for plaintiff.*
WM. DUNBAR, *for defendant.*

NEW ORLEANS, 10 *May*, 1848.

And further, on the same day, the testimony of D. Griffon was offered in evidence.

I certify that the two accounts, A and B, are taken from the books of the late Thomas Barrett, and are a true copy of the same, and that they

contain a full and correct statement of the accounts of Thos. Barrett and Michael Welch, esqr. I was a clerk in the house of Thos. Barrett during the period of the above two accounts, and know them to be correct, having compared them with the books. There was not, at any time, any funds or notes placed in the hands of Mr. Welch to secure him for his guarantee of the 3d May, 1845; if there had been I would have known it. I have known that Captain Welch traded from Alexandria to New Orleans as captain of steamboat, and was here every eight or ten days, from the third of May, 1845, up to this time.

D. GRIFFON.

NEW ORLEANS, 23 *February*, 1848.

We agree that the above evidence may be used as if the witness was sworn and examined in open court, in the case of the Louisville Manufacturing Company vs. Mr. Welch, and that the accounts A and B be taken without requiring the production of the books of Barrett.

STOCKTON & STEELE, *for plaintiff.*
WM. DUNBAR, *for defendant.*

NEW ORLEANS, *February* 23, 1848.

Sketch of account marked A.

DR. *Michael Welsh, esq., in acc't current with Thomas Barrett.*

1842.			
Oct. 12	To cash paid you - - - -		$200 00
Nov. 1	do. " - - - -		500 00
Nov. 24	do. " - - - -		500 00
Dec. 31	W.H. Manadna for pds.66 bales his cotton - -	$1,109 83	
	Less cash advanced by you, $700 and $209 78 -	909 78	
			200 05
1843.			
Feb. 8	cash paid you - - - -		450 00
Feb. 8	do. " - - - -		800 00
Mar. 8	amount of invoice of sugar and coffee -		62 40
Mar. 23	do. do. molasses, &c. -		18 89
May 9	do. do. sundries - -		9 06
May 14	acceptance your draft due 4th Jan., 1844		1,478 50
May 31	do. " " favor of J. K. Elgee, due 27th Sept. '43 - -		1,500 00
May 31	acceptance your draft in favor of J. K. Elgee, 27 Nov. '43 -	3,000 00	
	Bearing interest from 24 May, '43, to 27 Nov. '43, 187 ds. at 8 per cent. - -	124 66	
	Cash, 27 Nov. '43	$3,124 66	

A—Continued.

Dr. *Michael Welsh, esquire's, acc't current with Thomas Barrett.*

1843.			
May 31	To less difference between par & B'k of Orleans notes, at 50 cents per dol. in which note and interest is to be paid -	$1,562 33	
			$1,562 33
	acceptance to your draft fav'r J. K. Elgee, due 27 May, '44	3,000 00	
	bearing interest from 24 May, '43 (12 mos. is 1 yr. at 8 per cent.) - -	240 00	
	Cash, 27 May, 1844 -	3,240 00	
	less difference between par and Bank of Orleans notes, at 50 cts. per dol. in which note and interest is to be paid	1,620 00	
June 2	Cash, 27 May, 1844		1,620 00
June 2	cash paid first payment on plantation -		1,500 00
June 16	amount of invoice of rice, pork, and molasses - - - -		62 35
June 27	amount of 1 brl. hams, W. J., 267 lbs., at 8 cts., &c. - - - -		22 02
	this amount paid H. Lynch & Co'y, per your letter 22d inst. - - -		121 61
			10,605 21
July 6	Amount brought forward - -		10,605 21
July 26	amount of invoice of bagging and rope -		123 74
Aug. 8	do. do. sundries - -		19 73
Aug. 8	do. do. do. - -		48 18
Sept. 1	do. do. do. - -		163 56
Sept. 13	difference in exchange of a × cut saw -		2 25
Sept. 11	cash paid you - - - -		400 00
Sept. 12	your draft favor of S. W. Gordon for a wagon - - - -		127 50
Oct. 27	amount of invoice of sundries - -		22 94
Nov. 7	do. 20 soldiers' jackets - -		20 00
Nov. 9	do. invoice of sundries - -		48 02
Nov. 22	cash paid your draft favor W. R. Leckee		176 59
Dec. 18	do. William Dunbar - -		100 00
Dec. 29	your draft favor G. R. Waters - -		75 00
	cash paid your draft favor S. Brogdon -		131 00
	balance - - - -		1,637 88
			$13,703 60

A—Continued. Cr.

1842.			
Oct. 5	By nett proceeds sales 4 bales cotton	$125 77	
Oct. 5	do. " 4 do.	107 08	
			$232 85
Nov. 6	do. " 28 do. - -		442 00
Nov. 7	do. " 38 do. - -		667 83
Nov. 7	do. " 2 do. - -		40 53
Nov. 19	W. H. Manachen for this am't, balance due by him to Aneschius M'C. Wright, paid by you - -	196 22	
	do. for am't of first bill due J. B. Star	13 56	
			209 78
Nov. 10	S. G. Young's draft your favor due 21 Jan'y, 1843 - - - -		165 53
Nov. 17	cash received from Rivardi & Co'y for your acc't - - - -		1,000 00
1843.			
Jan. 18	nett proceeds sales 5 bales cotton -		116 08
Jan. 22	do. " 1 do. -		22 08
Jan. 31	Thomas S. Moon's draft in your favor -		600 00
May 27	nett proceeds sales 1 bale cotton -		18 61
			3,515 29
1843.	amount brought forward - - -		3,515 29
June 2	cash collected, Lambeth & Thompson, draft due 24 May - - -		91 15
June 13	ditto rec'd $5,000 dollars in gold a ¾ per cent. pm. - - - -		5,037 50
June 24	ditto " $100 and 28 75 - - -		128 75
July 8	ditto " from you in paper -	$1,000 00	
	" sundry gold 897 50 - pm. 6.05 - -	903 55	
	" for one Spanish doub.	16 25	
	" " 2 Mexican do. -	31 00	
	" " 3 2-dollar pieces -	6 00	1,956 80
Aug. 8	ditto " from you in gold 700 00, premium 5.25 - - - -		705 25
Sept. 10	John Goodwin & Co's acceptance, due 4 Nov., 1843 - - - -		211 56
Sept. 4	cash collected draft on Ferguson & Reid, due 4 Sept., 1843 - - -		144 43
Oct. 21	nett proceeds sales 12 bales cotton -		399 62
Oct. 24	J. R. Crosby for amount paid him by you		403 45
Nov. 25	nett proceeds sales 20 bales cotton -		594 26
Dec. 10	ditto " 14 ditto - -		515 53
			$13,703 60
	By balance - - - -		1,637 88

Account marked B.

Dr. *Michael Welch, esq., in acc't current with Thomas Barrett.*

1844.			
Jan. 11	To acceptance of your dft. fav'r T. Crain, due 23 Jan'y, 1844		$500 00
Jan. 18	cash paid dft. fav'r W. Armstrong		566 66
Feb. 20	acceptance of J. M. Barrett's dft. fav'r J. E. Hyde, due 22d May, 1844		200 00
Mar. 13	cash paid protesting J. Brown dft. of 220 38 for your account	$3 00	
	do. T. G. Compton $157 17 for your acc't	3 00	
			6 00
Mar. 13	invoice of sundries as rendered		166 06
Mar. 15	ditto " tea, sugar, coffee, and candles		23 31
Mar. 21	cash paid for a horse		67 00
Mar. 27	acceptance of J. K. Elgee's drft. for your acc't, due 21st April, 1844		300 00
Mar. 27	invoice of corn		46 48
April 2	ditto " nails and hay		31 80
			1,907 31
	amount brought forward		1,907 31
April 12	cash paid for slaves and keep of horse		6 50
April 20	do. " Mr. Sinot for acc't of horse		15 00
April 24	invoice of pork		36 26
May 4	ditto " corn and bacon		61 10
May 7	ditto " pork		46 90
June 10	ditto " corn, hay, and pork		57 28
Aug. 17	cash paid protest of drft. on C. Mulholland		3 00
Oct. 3	invoice of sundries		79 29
Oct. 18	do. do.		57 33
Nov. 30	acceptance of dft. fav'r J. K. Elgee due 22d Feb'y, 1845.		206 00
Dec. 18	invoice of pork and nails		51 76
1845.			
Jan. 30	do. " corn and pork		87 48
Jan. 30	do. " grindstones and hoes		10 90
Mar. 27	do. " corn and pork		87 15
May 6	do. " ditto		72 41
May 31	acceptance of dft. fav'r Jno. Amsden, due 25th July, 1845		200 00
June 4	invoice of pork		55 74

B.—Continued. Dr.

1845.			
June 20	To balance at debit of owners of st'r Rodolph transferred to your debit per acc't rendered		$210 33
Aug. 2	invoice of bagging, rope, and sundries		258 86
Oct. 18	acceptance of drft. fav'r A. Harkness, due 10th November, 1845		384 21
Oct. 18	cash paid you		150 00
Oct. 26	Mrs. J. P. George, for wood furnished you by her		17 50
Oct. 19	invoice of brogans and pork		126 08
Oct. 25	cash paid you		350 00
Nov. 11	invoice of bagging and rope		59 97
Nov. 17	acceptance of your drft. fav'r Messrs. Biern & Burnside, due 4th Jan., 1846		57 57
Nov. 29	cash paid your order fav'r steamer Riamicha		6 50
Nov. 30	acceptance of your dft. fav'r Lillard, Matby & Co., due 22d January, 1846		311 24
Dec. 15	invoice of salt		6 15
Dec. 15	cash paid Jones, lawyer, am't note	$480 37	
Dec. 15	" " do. do.	50 00	
Dec. 15	" " do. expenses	16 13	
			546 50
			5,516 32
1846.	amount brought forward		5,516 32
April 14	administration of Peter Conroy's estate, for am't due by G. M. Barrett, of Alex'a, say	$365 55	
	settled by you at 50 pr. $	182 77	
			182 77
May 9	cash paid Louis Baillio for wood	39 32	
	6 months' interest on same	1 57	
			40 89
May 27	amount due est. Peter Conroy by you		22 45
	balance		1,468 94
			$7,241 37

B—Continued.

1844.	Cr.		
Jan. 10	By balance at your credit pr. acct. rendered -		$1,637 88
Feb. 9	G. M. Graham, dft. for upward freight pr. Star - - - - -		45 00
Feb. 20	M. Florens' dft. in your favor - -		29 38
Feb. 28	H. Swilly's " " " - -		10 81
Feb. 28	W. W. Whittinghton in fav'r W. R. Lickie, due 4th April, 1844, received from you - - - -		75 00
Mar. 15	cash received - - - -		163 95
Mar. 27	R. K. Hunter for freight salt, per Star - - -	$3 75	
	R. K. Hunter for freight, bagging, rope, and coffee - -	3 75	
			7 50
Mar. 27	Mme. Vve. A. Dalichamp's drft. fav'r st'r Star - -	10 88	
Mar. 27	L. Marin drft. fav'r st'r Star -	1 37	
	F. Conant " " do. -	22 87	
	C. N. Roques, fils., drft. fav'r st'r Star - - - -	23 69	
	Chastan Metoyer, drft. fav'r st'r Star - - - -	22 10	
	Louis Lecour, drft. fav'r st'r Star	1 73	
	J. B. D. Metoyer " " do. -	15 75	
	T. L. Metoyer " " do. -	56 50	
	Rose Metoyer " " do. -	34 16	
	Victor Rachel " " do. -	77 50	
	Rich'd Woods " " do. -	40 00	
	Pierre Michel " " do. -	3 75	
	Emile Dupart " " do. -	25 50	
			335 80
			2,305 32
1844.	amount brought forward - - -		2,305 32
Mar. 27	J. B. P. Rachal, draft fav'r st'r Star - - -	10 67	
	A. Broiset, draft fav'r st'r Star -	2 50	
	Jos. Lerow " " do. -	2 62	
	V. Dubois " " do. -	3 25	
			19 04
April 1	Gervais Baillot, dft. in your fav'r -		16 38
April 12	Nett proceeds sales of 12 bales cotton -		386 98
April 15	Vve. A. Cotonnais for upward frt. pr. Star, 31st July, 1843 - - -		2 63

B—Continued.

1844.	Cr.	
April 18	By J. F. McCarthy for price of a horse -	$100 00
May 6	N. Lecour for dft. fav'r st'r Star - -	5 00
May 6	J. N. F. Richardson's dft. fav'r Neal and Winn - - - - -	96 70
1845.		
April 9	nett proceeds sales of 4 bales cotton -	97 17
June 4	balance at credit of st'r Star transferred to your credit, per account - -	221 28
Sept. 15	nett proceeds sales 4 bales cotton -	135 48
Sept. 18	ditto " 7 ditto -	212 80
Sept. 18	H. Jett's order for sundry freights -	21 88
Oct. 2	nett proceeds sales 12 bales cotton -	328 01
Oct. 18	ditto " 28 ditto -	692 64
Nov. 15	ditto " 27 ditto -	788 82
1846.		
Feb. 6	bills payable, No. 90, pr. B. R. retired by you - - - -	311 24
Oct. 31	½ of bill payable, No. 157, pr. B. B., due 27th May, 1844 - - -	1,500 00
		$7,241 37
	By balance - - -	$1,468 94

E. and O. E.

THOS. BARRETT,
Pr. D. GRIFFON.

And further, on the 11th day of May, 1848, the following entries were made of record, to wit:

Louisville Manufacturing Co. vs. M. Welch. } 1621.

The trial of this cause being resumed, the jurors yesterday sworn were called and found present, except C. L. Frost. The court proceeded to complete the panel and supply the vacancy occasioned by the absence of C. L. Frost; whereupon appeared J. H. Felt, J. P. Wilson, F. E. Vose, L. Bates, and G. A. Wheeler, who were empannelled and sworn to try the *issued* joined between the parties, and thereupon the cause proceeded; when, the evidence and argument of counsel being closed, the court charged said jury, and appointed J. P. Nelson foreman thereof; whereupon said jury retired to consult upon their verdict.

LOUISVILLE MANUFACTURING COMPANY
vs.
MICHAEL WELCH. } 1621.

The jury empannelled and sworn to try the issue joined between the parties in this case, and a verdict give according to the evidence, to wit, Henry Simon, M. Duggan, E. P. Knight, Alexis Leroy, John Donovan, Zacharie Relf, John Jenkins, J. H. Felt, J P. Nelson, F. E. Vese, L. Bates, and G. A. Wheeler, having retired to deliberate upon their verdict, returned into court with the following, to wit, "New Orleans, May 11, 1848, we the jury in this case find for defendant. John P. Nelson, foreman;" whereupon it was considered by the court that said verdict be and the same is hereby recorded; and the court being satisfied therewith, it is ordered, adjudged, and decreed, that judgment be rendered in favor of the defendant and against the plaintiffs, that plaintiffs' claim be dismissed, and said plaintiffs be condemned to pay the costs of suit.

Judgment rendered 11th May, 1848.
Signed 18th May, 1848.

THEO. H. McCALEB, [SEAL.]
U. S. judge.

And further on the 11th day of May, 1848, the following bills of exceptions *was* filed in the clerk's office:

United States circuit court of Louisiana.

LOUISVILLE MANUFACTURING COMPANY
vs.
MICHAEL WELCH.

Be it remembered, that on the trial of this cause, and before the jury retired, the plaintiffs by their counsel, Stockton & Steele, requested the court to charge the jury as follows:

1st. That the statement made by defendant to witness, Chambers, who had called on behalf of plaintiffs to demand payment, that on the assurance of Barrett that the debt had been paid, he, Welch, had given up papers and security by which he could have secured himself from loss, was an acknowledgment that he had due notice of the fact, that the plaintiff had sold the goods to Barrett on the faith of the letter of credit.

2. That if notice of the purchase of goods from plaintiffs on the letter of credit was given within a reasonable time by Barrett to defendant, it enured to the benefit of plaintiffs as effectually as if the notice had been given him directly from the plaintiffs.

3. That the immediate and strict notice required to be given by the holder of a protested bill of exchange or promissory note is not requisite in cases of guaranty.

4. That if there was no other notice, that given by plaintiffs at the time of the protest of the first bill, or shortly before, or shortly after the date, was sufficient.

5. That the statement made by Welch, the defendant, to witness,

Chambers, while the latter was acting for plaintiffs in endeavoring to collect the debt, that he had not then the means to pay the debt, but after another cotton crop he would be able to pay, and that he did not wish to throw any obstacles in the way of the collection of the debt, was a waive of all objections to the payment thereof, was an acknowledgment of his legal liability, and a promise to plaintiffs to pay them the debt.

6. That the failure to protest any of the bills of exchange was not a giving of further time to the debtor, Barrett, and the liability of the defendant was in no way affected thereby.

7. That the giving a reasonable credit to Barrett on the sales was no violation of the rights of Welch, and that the credits in this case were reasonable.

8. That the mistake of Welch as to the fact of the debt having been paid does not release his obligation.

Whereupon the court instructed the jury as desired by the plaintiffs in their second, third, and sixth points of instruction, but refused to give any of the other instructions asked by the plaintiffs; to which ruling of the court, the plaintiffs by their said counsel excepted, tendered this their bill of exception, and prayed that it might be signed, which is done accordingly.

And be it further remembered, that at the same time the defendant, by Wm. Dunbar, his counsel, asked the court to charge the jury as follows:

1. That upon acceptance by the plaintiffs or their agents of the letter of credit, notice should have been given in a reasonable time to the defendant that they had accepted the guaranty, and that they meant to furnish Thomas Barrett with bagging and rope upon the faith of defendant's guaranty.

2. That after the bagging and rope had been furnished by them they should have given immediate notice to the defendant of the amount furnished, and the sum of money for which they looked to the defendant for payment.

3. That the credit to Thomas Barrett should not have been extended beyond the term mentioned in said letter of credit, viz., the first of December, 1845, the term mentioned in said guaranty.

4. That if the defendant had been released or discharged by the failure of the plaintiffs or their agents to give the proper notices to the defendant as before charged, that the obligation of the defendant on the guaranty could be revived, or the laches or neglect of the plaintiffs, or their agents, waived only by a promise of the defendant to pay with a full knowledge of all the circumstances; and that the promise must be explicit and made out by the most clear and unequivocal evidence.

5. That if the jury believe that time was given by the plaintiffs or their agents to Thomas Barrett at the maturity of any of the drafts or notes sued on, without the consent of the defendant, that the defendant is hereby relieved from the payment of any one of them upon which said time was given.

Whereupon the plaintiffs objected to the court giving such instruc-

tions so asked by the defendant through his said counsel, but the court overruled said objections of the plaintiffs, and gave to the jury all the said instructions so asked as aforesaid by the defendant; to which ruling and instructions by the court the plaintiffs by their said counsel excepted, tendered this their bill of exceptions, and prayed the same might be signed, which is done accordingly. The court, in refusing to give the fifth instruction asked by the plaintiffs, stated to the jury that it was a question of fact for their own determination, and that for that reason he refused to give that instruction.

THEO. H. McCALEB, *U. S. judge.*

And afterwards, to wit, on the 19th day of June, 1848, the following assignment of errors was filed in the clerk's office:

LOUISVILLE MANUFACTURING COMPANY, plaintiffs in error, vs. MICHAEL WELCH, defendant in error.

Fifth circuit court of the United States for the district of Louisiana.

The plaintiffs in error, the Louisville Manufacturing Company, assign the following as errors for which the judgment should be reversed, the verdict set [aside], &c.

1st. The court erred in refusing to charge the jury as follows:

1st. That the statement made by defendant to witness, Chambers, who had called on behalf of the plaintiffs to demand payment, that on the assurance of Barrett that the debt had been paid, he (Welch) had given up papers and security by which he could have secured himself from loss, was an acknowledgment that he had due notice of the fact that the plaintiffs had sold the goods to Barrett on the faith of the letter of credit.

2d. That if there was no other notice, that given by plaintiffs at the time of the protest of the first bill, or shortly before, or shortly after that date, was sufficient.

3d. That the statement made by Welch, the defendant, to witness, Chambers, while the latter was acting for the plaintiffs in endeavoring to collect the debt, that he had not then the means to pay the debt, but after another crop of cotton he would be able to pay, and that he did not wish to throw any obstacles in the way of the collection of the debt, was a waiver of all objections to the payment thereof, was an acknowledgment of his legal liability, and a promise to plaintiffs to pay them the debt.

4th. That the giving a reasonable credit to Barrett on the sales was no violation of the rights of Welch; and that the credits given in this case were reasonable.

5th. That the mistake of Welch, as to the fact of the debt having been paid, does not release his obligation.

2d. The court erred in charging the jury as follows:

1st. That the credit of Thomas Barrett should not have been extend-

ed beyond the term mentioned in said letter of credit, viz., the first of December, 1845.

On which errors the plaintiffs in error insist and pray the reversal of the said judgment.

STOCKTON & STEELE,
Counsel and attorneys for plaintiffs.

And further, on the same day the following petition for a writ of error was filed in the clerk's office:

THE LOUISVILLE MANUFACTURING COMPANY
vs.
MICHAEL WELSH. } No. 1621.

To the honorable the judges of the fifth circuit court of the United States, held in and for the district of Louisiana; the petition of the Louisville Manufacturing Company, the plaintiffs in the above entitled cause, most respectfully shows:

That they are advised by their counsel there is error in the judgment of this honorable court rendered against them, and in the ruling of the court on the trial of this cause.

Wherefore they pray that a writ of error be allowed them in the premises; that said writ be made returnable into the Supreme Court of the United States, at the city of Washington, at the term thereof to be there begun and holden on the first Monday of December, 1848; that said defendant, Michael Welch, be cited to appear then and there to answer to said appeal; that the amount of the bonds to be given by your petitioners be fixed, and that their bondsmen be approved and accepted; and that all general relief be granted to your petitioners. And as in duty, &c.

STOCKTON & STEELE,
For petitioners.

And further, on the same day the following motion and order were made of record, to wit:

LOUISVILLE MANUFACTURING COMPANY
vs.
MICHAEL WELCH. } 1621.

On motion of R. C. Stockton, esq., of counsel for the plaintiffs, and on representing that the said plaintiffs felt aggrieved at the judgment rendered in this cause on the 11th May, 1848, and prayed for a writ of error to issue herein returnable to the next term of the Supreme Court of the United States, it is therefore ordered that a writ of error be, and the same is hereby, allowed to said plaintiffs, returnable to the next term of the Supreme Court of the United States, on their furnishing their bond, with George Forman as surety, in the penal sum of five hundred dollars, conditioned according to law.

And afterwards, to wit, on the 21st day of October, 1848, the following bond was filed in the clerk's office, to wit:

Know all men by these presents, that we, Louisville Manufacturing Company, resident in the State of Kentucky, as principal, and George Forman, of New Orleans, as security, are held and firmly bound, jointly and severally, unto Michael Welch, in the sum of five hundred dollars, lawful money of the United States, to be paid to the said Michael Welsh, his heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the 21st day of October, in the year of our Lord eighteen hundred and forty-eight.

Whereas the Louisville Manufacturing Company have this day presented a petition to the honorable the circuit court of the United States for the 5th circuit, holding sessions in and for the district of Louisiana, praying a writ of error to the circuit court U. S. for the district of Louisiana.

Now, the condition of the above obligation is, that we, the above bounden Louisville Manufacturing Company and George Forman, will well and truly pay to the said Welch, the defendant in said suit, all such damages as he may recover against us in case it should be decided that the said writ of error was wrongfully obtained.

Louisville Manufacturing Company,
Per R. C. STOCKTON, *Attorney.* [SEAL.]

GEORGE FORMAN,
Per R. C. STOCKTON. [SEAL.]

United States of America, district of Louisiana, circuit court of the U. S., fifth circuit, clerk's office.

I, Edmund Randolph, clerk of said court, do hereby certify, that the preceding thirty-five pages, and this page, are a true, full, and correct transcript of the proceedings in this case.

In testimony whereof I have hereunto set my hand and affixed my seal of office, this ninth day of November, A. D. 1848. [SEAL.]

ED. RANDOLPH, *Clerk.*
By JAS. M. DOWNS, *D. C.*

United States of America, circuit court of the United States, for the fifth circuit and district of Louisiana.

LOUISVILLE MANUFACTURING COMPANY
vs.
MICHAEL WELCH.

I, Theodore H. McCaleb, United States judge for the district of Louisiana, do hereby certify, that Edmund Randolph, whose name is signed to the above certificate as clerk of the circuit court of the United States for the district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

I further certify, that James M. Downs, who signed said Edmund Randolph's name as clerk, was at the time of signing the same the duly appointed and qualified deputy clerk of said Edmund Randolph.

Given under my hand and seal at New Orleans, in the district of Louisiana, this 9th day of November, A. D. 1848.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Citation in error.

The United States of America, to Michael Welsh, or his attorney of record, William Dunbar, esq., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the 1st Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the 5th circuit and district of Louisiana, wherein the Louisville Manufacturing Company are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 11th day of October, in the year of our Lord one thousand eight hundred and forty-eight.

THEO. H. McCALEB, *U. S. Judge.*

Marshal's return.

Received October 11th, 1848, and on the 16th day of October, 1848, served a copy of the within citation in error on Mr. Michael Welsh, in person, in the city of New Orleans. Returned October, 16th, 1848.

JOS. PRADOS, jr., *D'y U. S. marshal.*

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the 5th circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the Louisville Manufacturing Company, plaintiffs, and Michael Welch, defendant, a manifest error hath happened, to the great damage of the said Louisville Manufacturing Company, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceed-